OFFICE OF THE CHILD ADVOCATE
PRELIMINARY REPORT

JACKSON INVESTIGATION
An Examination of Failures
Of New Jersey's Child Protection System
And Recommendations for Reform

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This Preliminary Report memorializes the Office of the Child Advocate's (the "OCA") initial findings and conclusions regarding the discovery of four grossly malnourished adopted children in Collingswood, New Jersey and the child welfare system serving those children from 1991 to 2003. The Report consists of four sections: Introduction, which summarizes and describes the initiation, scope, and methods of the OCA's inquiry; Findings of Fact, which details factual conclusions made after review of the evidence; Relevant DYFS and Other Regulations and Procedures, which discusses the legal obligations of the various components of the child welfare system and the degree of compliance with those obligations in this case; and Recommendations concerning remedial measures designed to improve the child welfare system.

I. INTRODUCTION

A. Summary of the OCA's Preliminary Findings and Conclusions

On October 10, 2003, the Collingswood, New Jersey police responded to an early morning call concerning "a little kid . . . eating out of the trash can."[1] The Collingswood police later confirmed that the child, who stood four feet tall and weighed forty-five pounds, was actually nineteen years old. That child, B.J., was the adopted son of Raymond and Vanessa Jackson. Later that day, the police learned that three other adopted children in the Jackson household, thirteen-year-old K.J., ten-year-old T.J., and nine-year-old M.J., were also dramatically underweight. The four boys were immediately removed from the house and transported to a local hospital.[2]

Since October 10, 2003, the four boys -- B.J., K.J., T.J., and M.J. -- have been thoroughly examined by medical professionals and put on a supervised, normal diet,

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[2] Press Release, Office of the Camden County Prosecutor (October 25, 2003), Appendix C at 2.

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along with vitamins. The medical professionals have ruled out any disease or medical condition as the cause of the boys' obvious weight and developmental deficiencies. Since being placed on a normal diet, with vitamins, each of the boys has demonstrated dramatic weight and height gains. It appears that the boys were intentionally malnourished while they were in the Jackson household.

The fact that the boys were underdeveloped and malnourished should have been discovered by the Division of Youth and Family Services ("DYFS") long before October 10, 2003. DYFS' own regulations and procedures should have required at least annual proof from the Jacksons that the boys were receiving regular medical examinations and care. DYFS' records reveal, however, that no such proof was provided by the Jacksons between 1997 and 2003, or even requested of them. That failure was critical here -- it appears that none of the four boys received any routine medical exams or treatment for their malnourishment between 1997 and 2003 (or before 1997, for that matter). If they had received regular medical examinations by a qualified doctor with access to medical histories it is likely that their conditions would have been diagnosed and treated years earlier.

Moreover, there were early reports of malnourishment concerning B.J., including a report by his school in May 1995. There was no follow-up to those reports and the very next school year, B.J. was taken out of public school by the Jacksons in favor of home schooling.[3] DYFS apparently did not object and never requested any medical examination of B.J. in response to the reports of eating problems.

[3] In response to the Jackson case and effective February 9, 2004, DYFS has adopted a policy to eliminate home schooling for foster children. Memorandum from Edward E. Cotton, Director, Division of Youth and Family Services, in response to OCA's request for policy and practice changes as a result of the Jackson Case. (January 30, 2004), Appendix C at 3.

Indeed, according to DYFS' records, DYFS caseworkers and other employees visited the Jackson household no fewer than thirty-eight times during the 1999-2003 period in connection with the proposed adoption by the Jacksons of another child, ten-year-old B.P. Nevertheless, none of these caseworkers or other employees apparently noticed the stark underweight and underdeveloped conditions of the four boys, or did anything about it if they did.

In short, every step of the way, the New Jersey child welfare system failed these four boys. Where regulations existed that should have resulted in medical examinations that almost certainly would have diagnosed and treated their conditions, those regulations were misunderstood or ignored. Where reports of eating issues were received, those reports did not result in any follow-up. Where DYFS procedures did result in visits to the Jackson home, the DYFS employees either did not interview or observe the four boys on most occasions, or they ignored the obvious issues raised by their physical condition when they did. The failures here were systemic.

These findings portend so wide a berth between policy and practice as to render virtually impotent the administrative code. The gaps call into question DYFS' ability to ensure that its self-imposed regulatory requirements are properly interpreted and applied by the workers and supervisors responsible for enforcement. It is, in the end, likely that these policies were written for a different system – for a system with adequate staffing, foster homes and medical services. Investigating whether workers failed to conform to specific rules has yielded the unsettling conclusion that many policies designed to protect children are not strictly adhered to at DYFS, or even fully understood

in the DYFS offices, raising inevitable concerns that the system is too debilitated to support its own policies.

Finally, and equally troubling, the events concerning the Jackson household call into serious question the accuracy of certain public statements by the Department of Human Services (the "DHS") asserting that, between June and October 2003, "face-to-face safety assessments" were conducted on "more than 14,000 children in foster care." There is no record of any such safety assessment concerning the Jackson household between June and October 2003. Rather, the OCA's investigation has revealed that in a substantial number of cases, including the Jackson situation, DYFS did not require a face-to-face visit specifically to assess safety but instead accepted a mere written report based upon a review of file documents memorializing routine home visits over the prior six months to one year. Again, the DYFS system and procedures failed the four boys at issue: if a qualified, face-to-face safety assessment of the Jackson household had been conducted between June and October 2003, their conditions should have been identified and treated sooner.

The story of these four boys has implications that reach beyond their tragic individual histories. Accordingly, the OCA offers the following preliminary recommendations[4] to DHS and DYFS, as appropriate, in an effort to avoid any repetition of the apparent failures that led to the plight of these four boys:

- Expand the revised safety assessment process to include all children under ARC supervision and ensure that contemporaneous, face-to-face visits occur with the child and all household members.
- Establish a medical continuum of coordinated care for foster children. Establish medical offices at DYFS District Offices and Adoption Resource Centers, responsible for tracking and reporting children's health histories.

[4] An expanded discussion of each is contained in Section IV of this Report.

- Fully integrate DYFS case practice to ensure that critical case information is shared between and among offices, and that DYFS employees are aware of and comply with DYFS regulations to provide meaningful, holistic and uninterrupted services to all children in care.
- Provide an array of post-adoption supports, including the requirement that families who elect to apply for and are approved to receive a post-adoption subsidy ensure that a physical examination is completed for each child annually by a State-licensed pediatrician.
- Implement a comprehensive and ongoing Quality Assurance initiative that proactively audits and improves work with children and families.

B. The OCA Preliminary Inquiry

1. The Initiation of the OCA Inquiry

On September 26, 2003, the OCA was created by statute to, among other things:

> a. Investigate, review, monitor or evaluate any State agency response to, or disposition of, an allegation of child abuse or neglect in this State;
>
> b. Inspect and review the operations, policies and procedures of . . . foster homes . . . ; [and]
>
> c. Review, evaluate, report on and make recommendations concerning the procedures established by any State agency providing services to children who are at risk of abuse or neglect, children in State or institutional custody, or children who receive child protective or permanency services.[5]

Two weeks after the creation of the OCA, on October 10, 2003, B.J., K.J., T.J. and M.J. were removed from the Jackson household in response to an early morning call to the Collingswood police that B.J. was "eating out of the trash can."[6]

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[5] *N.J.S.A.* 52:17D-5.
[6] *See supra* note 1.

On October 24, 2003, the Camden County Prosecutor's Office (the "CCPO") and the Collingswood Police Department arrested Raymond and Vanessa Jackson for the alleged systematic starvation of B.J., K.J., T.J., and M.J.[7] That same day, the DHS first informed the OCA that DYFS employees had been in the Jackson household many times in recent years to monitor a pre-adoptive foster child, ten-year-old B.P. Pursuant to its statutory jurisdiction, the OCA then commenced an investigation to determine whether any systemic flaws in the child welfare system contributed to the failure to discover the alleged starvation of the Jackson boys.

2. The Scope of the OCA Inquiry

During its investigation, the OCA reviewed and analyzed every component of the child welfare system that interacted with the Jackson household between 1991 and October of 2003.[8] That review included:

- DYFS' regulations, policies, casework practice, and compliance with those standards in connection with the evaluation of the Jackson household as a foster home;
- DYFS' regulations, policies, casework practice, and compliance with those standards in connection with the evaluation of the Jacksons as adoptive applicants;
- DYFS' supervision of B.P., a foster child placed in the Jackson household whose adoption was pending on October 10, 2003;
- DYFS' performance of (or, more precisely put, failure to perform) a safety assessment on B.P. (which would have involved the entire Jackson household) pursuant to the settlement agreement in *Charlie and Nadine H. v. McGreevey*, Civ. Action No. 99-3678 (SRC)
- The involvement of collateral systems, including schools and municipal government.

Because of the breadth of that inquiry, the OCA retained Latham & Watkins LLP ("Latham"), a global law firm with an office in Newark, New Jersey, to

[7] Law enforcement authorities charged Mr. and Mrs. Jackson with four counts of aggravated assault and fourteen counts of endangering the welfare of a child. *See supra* note 2.

[8] DYFS first approved the Jacksons as foster parents in 1991 and, as noted, the four boys were removed from the home on October 10, 2003.

assist in the investigation. The OCA appointed as Special Counsel Alan E. Kraus, a prominent trial lawyer and litigator experienced in conducting investigations, and Scott Louis Weber, who served as Deputy Special Counsel and then Special Counsel during the New Jersey Senate Judiciary Committee's hearings on racial profiling. John Ducoff was appointed Deputy Special Counsel, and Latham generously agreed to provide the services of its attorneys and paralegals *pro bono* because of the public importance of this matter.

The purpose of the OCA inquiry was to identify any systemic problems exemplified by the situation of the four boys at issue and any "lessons learned" that might help to avoid a recurrence of these terrible circumstances. The statute creating the OCA makes clear that the Office is to avoid "compromis[ing] the integrity of a State or county department or agency investigation, civil or criminal investigation or judicial or administrative proceeding."[9] Moreover, the OCA was, and is, mindful of the due process rights of anyone who might be accused of wrongdoing, intentional, reckless or negligent, in connection with the events that gave rise to the OCA investigation. In deference to the Camden County Prosecutor's pending criminal investigation of the Jacksons and the DYFS employees involved with the Jackson household, the OCA has not attempted to interview or depose the Jacksons or any of the DFYS employees personally involved with the Jackson household about the facts of that household or DYFS' interaction with it. Rather, the OCA's focus has been on systemic issues and the written records (or lack

[9] *N.J.S.A.* 52:17D-11(b)(1). Since October 10, 2003, the Camden County Prosecutor's Office (the "CCPO") has been conducting a criminal investigation of the Jacksons and the DYFS employees involved with the Jackson household. The OCA and the CCPO agreed to coordinate in the event that the OCA sought to interview or depose any of the subjects of the CCPO investigation. In the event that the OCA determines that those interviews are necessary, the OCA will, of course, continue to cooperate with the CCPO.

of written records) concerning DYFS' oversight of the children placed in the Jackson household.

3. Methods of the Inquiry

To date, the OCA has issued subpoenas[10] for, received, and reviewed thousands of pages of documents, including:

- DYFS case records for all of the children that the Jacksons adopted or applied to adopt, including both District Office ("DO") and Adoption Resource Center ("ARC") files;
- Medical records for B.J., T.J., K.J., and M.J.;
- The DYFS Southern Region Foster Home Unit file for the Jackson household;
- The Bureau of Licensing (now the Office of Licensing, or "OOL") file for the Jackson household;
- The Institutional Abuse Investigation Unit ("IAIU") file for the Jackson household;
- Personnel files for various DYFS employees involved with the Jackson household;
- Current DYFS Policy Manuals;
- Historical DYFS Policy Manuals covering the time periods during which services were provided to the Jacksons and children placed in the Jackson household;
- Gas and electric utility records for the Jackson household; and
- Student records from schools attended by the children.

The OCA has also conducted depositions of senior DHS and DYFS employees with experience in foster care, foster home approval, certification, and licensing, ARC adoptions, adoption subsidies, and the safety assessments conducted pursuant to the settlement agreement in *Charlie and Nadine H. v. McGreevey*, Civ. Action No. 99-3678 (SRC).[11]

[10] The OCA served subpoenas on: DHS; Voorhees Pediatric Rehabilitation Hospital; Our Lady of Lourdes Medical Center; CAMCare Health Corp.; Collingswood Borough Public Schools; Pennsauken Public Schools; Camden City Public Schools; and PSE&G. *See* Appendix C at 5 (including all OCA document subpoenas issued to date).

[11] *See* Appendix C at 6 (including all OCA deposition subpoenas to date).

II. PRELIMINARY FINDINGS OF FACT

A. B.J.[12]

In December 1991, seven-year-old B.J. weighed forty-three and three quarter pounds and stood forty-eight and one quarter inches tall. Twelve years later, when police removed him from the Jackson household in October 2003, B.J. weighed only forty-five pounds and stood forty-eight inches tall. Over the next three months he was placed on a normal diet and given vitamins. By February 5, 2004, B.J. had gained thirty-seven pounds and had grown six and one-half inches.

After extensive examination and testing, doctors have concluded that his low weight and small stature were not caused by any medical condition. His medical treatment when hospitalized in October 2003 was for malnourishment, severe anemia and growth retardation; he was later assessed for re-feeding syndrome.[13] A medical geneticist reported that B.J. had acquired growth hormone deficiency most likely caused by profound and long-standing emotional and physical neglect, including starvation. A gastrointestinal x-ray ruled out reflux. B.J. has not exhibited ongoing bulimic activity.

DYFS took custody of seven-year-old B.J. and placed him with Raymond and Vanessa Jackson in December 1991. During the next five years, DYFS assigned three different caseworkers at two different DYFS offices to B.J.'s case. Those caseworkers included at least fifteen entries in his file regarding issues with food.

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[12] The OCA filed a verified petition in the Superior Court of New Jersey, Chancery Division-Probate Part seeking the appointment of Michael Critchley as *pro bono* legal counsel for BJ. This application was necessary because B.J. had reached the age of majority; and, therefore was not entitled to legal representation by the Office of the Legal Guardian. The Honorable M. Allan Vogelson, P.J. Ch. granted the OCA's application by Order dated December 2, 2003.

[13] In the severely malnourished, rapid replacement of protein and calories can lead to "re-feeding syndrome," which refers to very low phosphate levels and can be life threatening. www.i-medicine.com, (visited February 7, 2004).

From March 3, 1992 through March 22, 1995, B.J. was seen by a primary care physician. He was also observed by a gastroenterologist from March 21, 1995 through December 12, 1995. From December 23, 1991 through March 28, 1995, B.J. continued to gain weight and grow. His heaviest recorded weight during that period of time was fifty-six and one half pounds on March 28, 1995. However, between March 28, 1995 and December 11, 1995, B.J. lost almost ten pounds. At the end of the year, he weighed forty-six and two third pounds. It is not clear that the caseworker recognized B.J.'s rapid weight loss in 1995, nor does it appear that the caseworker considered the gastroenterologist's records when preparing the final pre-adoptive report, which was submitted to the Family Court in June 1996.

DYFS also received two referrals regarding B.J.; both involved allegations that the Jacksons were not feeding foster children in their care. In September 1992, DYFS received a call indicating that another foster child in the Jackson household complained that he was hungry. The caller also stated that the foster child had only gained one-half of one pound and had not grown in height while in the Jacksons' care. DYFS conducted an investigation, but did not remove any children from the house and reached no apparent conclusion of neglect or abuse on the Jacksons' part. No medical examinations were apparently conducted.

In May 1995, DYFS received a report from B.J.'s school expressing concern that B.J. had failed to gain weight. According to the caller, B.J. complained that the Jacksons did not give him enough to eat. The caller also advised that Vanessa Jackson had delayed in taking B.J. to a medical appointment. A DYFS investigator questioned Vanessa Jackson, who showed him a cupboard full of canned goods and

stated that B.J. had a stomach problem that required her to control his diet. There is no record evidence that the DYFS worker requested a medical examination or any evidence of a plan of treatment for B.J.'s alleged stomach problem. At the conclusion of the investigation DYFS did not remove B.J. from the household. B.J. did not return to school the following September; the Jacksons advised DYFS in October that they had begun home schooling him.

In addition to those referrals, DYFS received further evidence that the Jacksons failed to feed B.J. adequately:

- On one occasion, B.J. begged his caseworker to take him out to eat before returning him to the Jackson household. She declined, but B.J. found a cookie in the car's glove compartment and ate it. He then pleaded with the caseworker not to tell Mrs. Jackson.

- On June 16, 1996, a therapist who had been seeing B.J. noted that he had climbed out of a second story window to get access to a neighbor's trashcan. She also noted that Vanessa Jackson informed her that the family kept their food locked away.

- Between December 22, 1994 and March 27, 1996, B.J.'s caseworker noted in writing on four separate occasions that B.J. appeared thin or underweight.

On February 14, 1996, Vanessa Jackson reported that B.J.'s physician had referred him to an endocrinologist to determine whether B.J. had a growth problem. However, the 1996 Medicaid records do not show any bills submitted to Medicaid for B.J. On February 26, 1996, B.J.'s gastroenterologist notified the family that he was leaving the practice and referred B.J. to another doctor. Again, the Medicaid records do not show any bills submitted against B.J.'s Medicaid number in 1996.

In 1996, B.J.'s case file contained four references to his issues with food. Perhaps most troubling was his therapist's June 13, 1996 summary of her therapy

sessions. She noted that B.J. climbed out of a second story window in order to search through a neighbor's trashcan for food. Her summary also stated that B.J. would begin group therapy with another therapist who specialized in eating disorders and had been recommended by B.J.'s endocrinologist. The source of her information is not known and there is no written evidence that any group therapy for B.J. took place.

On July 8, 1996, B.J.'s adoption was finalized. He remained eligible for Medicaid and a monthly adoption subsidy was paid, on his behalf, to the Jacksons. There is no indication that B.J. received any medical or dental care between 1996 and October 10, 2003, when he was removed from the Jackson household.

B. K.J.

In the fall of 1996, seven-year-old K.J. weighed thirty-eight pounds and stood three feet nine inches tall. Seven years later, when police removed him from the Jackson household, K.J. weighed only forty pounds and stood four feet tall. In seven years, he gained two pounds and grew three inches. Over the three months following his October 2003 removal from the Jackson household, he was placed on a normal diet and given vitamins. By February 2, 2004, K.J. had gained thirty-three pounds and had grown one and three-quarter inches.

After extensive examination and testing, doctors have concluded that his low weight and small stature were not caused by any medical condition. His initial assessment was malnutrition[14] and growth retardation, and a nutritional therapy note

[14] Malnutrition is defined as faulty nutrition due to inadequate or unbalanced intake of nutrients or their impaired assimilation or utilization. *Merriam-Webster Medical Dictionary* (2003).

diagnosed him with marasmus,[15] failure-to-thrive syndrome,[16] suspected neglect, and re-feeding syndrome risk.[17] A medical geneticist subsequently ruled out fetal alcohol syndrome,[18] bone dysplasia,[19] fracture, and rickets.[20]

In September 1994 when he was five years old, K.J. was placed in his first foster home (not the Jackson household). He weighed forty pounds and stood forty-two and one half inches tall, which placed him in the 50th percentile for both height and weight for children his age. K.J.'s first caseworker noted that he had issues with food on five separate occasions between November 1994 and February 1995. K.J.'s second caseworker referred to K.J.'s food issues on four separate occasions over the next six months.

On August 10, 1995, a physician evaluated K.J. He weighed thirty-nine pounds and stood forty-three and one-half inches tall. After almost one year in foster care, K.J. had grown one quarter of an inch, but had lost three pounds. One year earlier his height and weight had been within the 50th percentile for children his age. On August

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[15] Marasmus is a condition of chronic undernourishment occurring especially in children and usually caused by a diet deficient in calories and proteins but sometimes by disease (as congenital syphilis) or parasitic infection. *Merriam-Webster Medical Dictionary* (2003).

[16] Failure to thrive (FTT) is defined as a child with deficiencies in weight and height as compared to age related normals. This includes children whose weight and height are less than the 3rd percentile or whose weight or height have decreased more than 2 major percentiles (ex. 50th to 3rd percentile on their growth charts). MAGIC Foundation (2002) (a national non-profit organization created to provide support services for the families of children afflicted with a wide variety of chronic and/or critical disorders, syndromes and diseases that affect a child's growth.)

[17] *See supra* note 12.

[18] *See supra* note 8.

[19] Bone dysplasia, also known as fibrous dysplasia, is a chronic disorder of the skeleton that causes expansion of one or more bones due to abnormal development of the fibrous, or connective tissue within the bone. The abnormality will cause uneven growth, brittleness and deformity in affected bones. National Institutes of Health Osteoporosis and Related Bone Diseases – National Resource Center. www.osteo.org, (visited February 7, 2004).

[20] Rickets is a deficiency disease that affects the young during the period of skeletal growth, is characterized by especially soft and deformed bones, and is caused by failure to assimilate and use calcium and phosphorous normally due to inadequate sunlight or vitamin D. *Merriam-Webster Medical Dictionary* (2003).

10, 1995, his height was within the 25th percentile and his weight had fallen to the 10th to 25th percentile.

Two months later, on October 4, 1995, K.J.'s case was transferred to the Southern Region Adoption Resource Center. K.J. was assigned a new caseworker, his third in thirteen months. K.J. was having difficulty in his then-current foster home (also his third), and an ARC supervisor recommended a new placement. The supervisor believed that K.J. would benefit from individual attention and recommended placement in a home with fewer children. On November 2, 1995, however, K.J. was placed with Raymond and Vanessa Jackson. There were eight other children living in the home at that time, including M.J., K.J.'s biological brother.

On June 4, 1996, K.J. had a pre-adoptive medical examination. He was six years and eight months old, he weighed forty-one pounds, and stood forty-four inches tall. His weight was within the 10th percentile for children his age and his height was within the 3rd to 10th percentiles for children his age.

K.J. was again evaluated by a physician on September 10, 1996. He weighed thirty-eight pounds and stood forty-five inches tall. His weight placed him below the 3rd percentile for children his age and his height placed him within the 3rd to 10th percentiles for children his age. He had lost three pounds since his last evaluation, although he had grown one inch. The physician noted that K.J. was moderately under-developed. He also noted that K.J. "presented with some of the stigmata of possible fetal alcohol syndrome" associated with failure-to-thrive syndrome, based apparently on a medical history provided by Vanessa Jackson and the caseworker.

On March 14, 1997, K.J.'s adoption by the Jacksons was finalized with DYFS' concurrence. With the exception of one appointment with a dermatologist in 1999, there is no indication that K.J. received any medical or dental care until October 10, 2003, when police removed him from the home.

C. T.J.

On March 8, 1995, seventeen-month-old T.J. weighed twenty-eight pounds and was approximately two feet and seven inches tall. His weight fell within the 75th to 90th percentile for children his age, and his length placed him in the 25th to 50th percentile. Eight years later, when the police removed him from the Jackson household in October 2003, the almost ten-year-old T.J. still weighed twenty-eight pounds. He had grown only seven inches, to three feet and two inches tall. Over the next three months he was placed on a normal diet and given vitamins. By February 2, 2004, T.J. had gained fifteen pounds and grown three inches.

After extensive examination and testing, doctors have concluded that his low weight and small stature were not caused by any medical condition. Vanessa Jackson informed doctors that he had been diagnosed with failure-to-thrive syndrome and that there had been a question of fetal alcohol syndrome. Despite those assertions, a medical geneticist determined that his condition was compatible with a secondary growth hormone deficiency due to severe and prolonged psychosocial deprivation. The geneticist ruled out fetal alcohol syndrome.

T.J. entered foster care for the first time on January 3, 1994. Because he was born prematurely, weighing approximately three and one half pounds at birth, he was placed in a foster home for medically-fragile children. He lived in that home until July

18, 1994, when he was no longer classified as medically fragile. At that time, he weighed twenty-one and one-half pounds and was two feet four and one quarter inches tall. For the next nine months, T.J. lived with a non-relative caregiver. On March 7, 1995, however, he reentered foster care. The next day, he was placed in the Jackson household. As noted, at that time T.J. weighed twenty-eight pounds and was approximately two feet and seven inches tall.

While under the supervision of the District Office, physicians evaluated T.J. twice. At the first of those evaluations, on August 25, 1995, T.J. weighed twenty-four pounds. In the six months after he was placed in the Jackson household he had lost four pounds. His weight had dropped from between the 75th to 90th percentile for children his age to between the 10th to 25th percentile. No remedial steps were noted at that time. On October 13, 1995, while still under the supervision of the District Office, T.J. was evaluated again. The two-year-old T.J. weighed twenty-three pounds and was two feet and seven inches tall. Both his height and weight fell below the 3rd percentile for children his age, and he had now lost five pounds since being placed in the Jackson household. Again, no remedial steps were noted in his file.

T.J.'s case was transferred to the ARC in the summer of 1996. His pre-adoption examination occurred on October 15, 1996, when he was three years old. At that time he weighed twenty-one pounds and stood two feet and eight inches tall. He had grown one inch but lost seven pounds in the Jackson household, and both his height and weight fell below the 3rd percentile for children his age. At that time, the physician, a pediatric neurodevelopmentalist, noted that T.J. was markedly underweight and undersized and presented with failure-to-thrive syndrome. He also noted that T.J.

presented with possible fetal alcohol syndrome. The physician recommended a follow up to rule out rickets, a referral for an orthopedic examination, and that T.J receive follow up care at a local health care provider.

On November 16, 1996, T.J. was seen at the health care provider for follow up. He weighed twenty-three pounds and three and one-half ounces, a gain of two pounds and three and one-half ounces in one month. The physician ruled out rickets, ordered lab work, and scheduled a one-week follow up visit. The physician also instructed Vanessa Jackson to keep a diary of T.J.'s diet for the next week and to bring it to the next appointment.

On November 19, 1996, T.J. visited the health care provider again. He gained twelve and one-half ounces in that week; however, Vanessa Jackson advised the physician that she forgot to bring the food diary. Curiously, she also advised the physician that T.J. had only resided in her home for six months, when in fact he had resided there for twenty months. The physician noted that T.J. presented with failure-to-thrive syndrome and scheduled a follow up appointment for one month later. T.J. never returned to that health care provider, although he was seen by another doctor in March 1997 in connection with the orthopedic referral.

On December 12, 1997, T.J.'s adoption was finalized with DYFS' concurrence. DYFS indicated that T.J. enjoyed general good health and that the Jacksons continued to follow up on T.J.'s medical and developmental needs. DYFS' report made no mention of the three diagnoses of failure-to-thrive syndrome or of his low weight and height. Aside from the March 1997 orthopedic referral, there is no indication that T.J.

received any medical or dental care between the time of his adoption and October 10, 2003, when he was removed from the Jackson household.

D. M.J.

On August 10, 1995, seventeen-month-old M.J. weighed seventeen pounds and eight ounces and was twenty-nine inches long. Eight years later, when police removed him from the Jackson household in October 2003, the almost ten-year-old M.J. weighed twenty-two pounds and ten ounces and was thirty-seven and one-half inches tall. Over the next three months he was placed on a normal diet and given vitamins. By February 2, 2004, M.J. weighed forty-three pounds and was thirty-nine and five-eighths inches tall. He had gained over twenty pounds and grown over two inches in four months.

After extensive examination and testing, doctors have concluded that M.J.'s low weight and small stature were not caused by any medical condition. Vanessa Jackson informed doctors that he had been diagnosed with fetal alcohol syndrome, dwarfism, failure-to-thrive syndrome, and a history of low platelets. Despite those assertions, he was assessed as being malnourished, which resulted in growth retardation, and as having been subject to medical care neglect. In addition, a medical geneticist determined that his condition was compatible with a secondary growth hormone deficiency due to severe and prolonged emotional and physical neglect, including starvation. The geneticist ruled out fetal alcohol syndrome.

M.J. entered foster care in September 1994 when he was six months old. At that time he weighed sixteen pounds and was twenty-five inches long. His weight was within the 25^{th} to 50^{th} percentile for children his age, and his height placed him within the

10th percentile. A few weeks later, in November 1994, M.J. was again evaluated. He weighed eighteen pounds, two ounces and was twenty-five and one-quarter inches tall, placing him within the 50th percentile for weight and the 3rd percentile for height.

DYFS placed M.J. with the Jacksons in August 1995, and his case was transferred to the ARC and a new caseworker two months later. Just prior to his placement, a physician evaluated M.J. As noted above, he weighed seventeen pounds and eight ounces and was twenty-nine inches tall. That physician referred him to a pediatric endocrinologist, who saw him between November 2, 1995 and February 2, 1997. During that period the Jacksons failed to schedule follow up appointments on two separate occasions and failed to take M.J. to a pediatric gastrointestinologist as instructed. Based on those failures, the physician noted that Vanessa Jackson did not seem appropriately concerned about M.J.'s medical condition. There is no written evidence that DYFS took any steps in response to that observation.

During M.J.'s August 10, 1996, pre-adoption physical, the physician noted that M.J. had significant failure-to-thrive syndrome, generalized significant loss of subcutaneous tissue, and possible fetal alcohol syndrome. He also noted that follow up was necessary. The Jacksons' adoption of M.J. was nevertheless finalized on March 14, 1997 with DYFS' concurrence. DYFS' report to the court did not mention any of the physicians' concerns about failure-to-thrive syndrome, nor did it reflect the pediatric endocrinologist's note regarding Vanessa Jackson's inappropriate concern for M.J.'s medical condition. Instead, it suggested that M.J.'s small stature was genetic, despite an absence of any medical reports to that effect.

A few weeks after the adoption, on March 25, 1997, the Jacksons took M.J. to see the pediatric gastrointestinologist as instructed. That physician scheduled a series of evaluations. However, there is no indication that M.J. was seen by that physician again. There is also no indication that M.J. received any other medical or dental care until October 2003, when he was removed from the Jackson household.

III. RELEVANT DYFS AND OTHER REGULATIONS AND PROCEDURES

A. Foster Home Approval Process

Before DYFS can place a child in a foster home, the foster home must successfully complete an evaluation process. The standards that the foster home must satisfy are contained in regulations formally promulgated and adopted pursuant to the New Jersey Administrative Procedure Act.[21] The DYFS Field Operations Casework Policy and Procedures Manual (the "DYFS Manual") describes and interprets those standards, as do various forms, checklists, and tools provided to employees responsible for conducting that evaluation process.[22]

Prior to 1996, DYFS assigned the responsibility for the evaluation of foster homes to specialized foster home units within each District Office.[23] In 1996, DYFS consolidated the foster home units in DOs in Southern New Jersey (including Camden County) into a Regional Foster Home Unit ("RFHU") for the Southern Region. That unit assumed responsibility for the evaluation of foster homes within the region.[24]

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[21] *N.J.S.A.* 52:14B-1 to –15

[22] There have been several amendments to the regulatory scheme governing the approval of foster homes while the Jackson household was approved as a foster home. *See* Appendix A at 5 (providing a full discussion of the amendments to the regulatory framework for the relevant time period). Those amendments did not substantively alter the requirements of medical references or in-person interviews for other household members. *Id.*

[23] B. Schwebel Dep., 11:23 to 13:1.

[24] *Id.* at 10:15 to 11:3; 12:17 to 13:1.

In late 1998, DYFS consolidated the remaining foster home units into RFHUs.[25] Shortly thereafter, in 1999, DYFS' Bureau of Licensing ("BOL") "began, for the first time, to certify and regulate foster homes serving children under [DYFS'] supervision."[26] After the BOL became involved, the initial application to become a foster home became a two-step process: the RFHU would initiate contact with a potential foster home, visit the home, assemble all of the necessary information, and make a recommendation regarding whether the home met the requisite standards. The RFHU would forward the information and the recommendation to the BOL, which would make the final decision.[27] The BOL also assumed responsibility for: (1) recertifications of existing foster homes at the expiration of a two-year certificate of approval; and (2) annual reevaluations for all foster homes.[28] The BOL applied the same regulations as the RFHUs and the DOs had previously.[29]

Two of those regulatory requirements likely should have uncovered the alleged systematic starvation of B.J., K.J., T.J., and M.J from the time of their adoptions forward: the requirements for medical references and in-person interviews for household members other than foster children.

1. Regulations Governing Approval of Foster Home

In May 1989, DYFS undertook the "Operations Policy to Rules" project, which was "to review and incorporate existing [DYFS] policy contained in the [DYFS] Field Operations Casework Policy and Procedures Manuals into the New Jersey

[25] C. Blake Dep., 36:23 to –25; 40:25 to 41:8.
[26] 35 *N.J.R.* 521(a); C. Blake Dep., 41:21 to –23.
[27] C. Blake Dep., 42:19 to –22; 44:5 to –17; R. Crane Dep., 6:14 to 7:9.
[28] R. Crane Dep, 6:25 to 7:9.
[29] R. Crane Dep., 8:25 to 9:17.

Administrative Code as rules."[30] "This project . . . was initiated by [DYFS] to subject those policies which have widespread coverage, continuing effect or a substantial impact on the rights or legitimate interests of the regulated public to the rulemaking process required by the New Jersey Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq."[31] That project resulted in the December 16, 1991 proposal of comprehensive regulations governing foster care and foster home certification.[32] After notice and comment, those regulations were adopted on January 4, 1993, to take effect on July 1, 1993.[33]

The newly-adopted regulations codified DYFS' policies for the approval of foster homes. Those regulations required that DYFS evaluate foster homes to ensure that the homes satisfied DYFS' requirements.[34] The regulations also created a process for the annual reevaluation of foster homes previously approved.[35] The regulation governing the annual reevaluation was codified at *N.J.A.C.* 10:122C-2.14. That regulation, which was contained in Chapter 122C, "Approval of Foster Homes," and entitled "Reevaluation of a Foster Home," provided, in pertinent part:

> (a) *A Division representative shall reevaluate annually each approved foster home based on the standards in this chapter.* The reevaluation of an employee's foster home shall be conducted by the county office which supervises the employee's foster home, except when the employee works in that county office. In this situation, the county office in an adjacent county shall conduct the reevaluation.[36]

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[30] 23 *N.J.R.* 3693.
[31] *Id.*
[32] *Id.*
[33] 25 *N.J.R.* 116-17.
[34] 25 *N.J.R.* 118 ("These rules provide a process for a foster parent applicant and [DYFS] to determine whether an applicant and the applicant's family meet [DYFS'] standards to provide suitable foster care for children . . . .")
[35] *Id.* ("These rules . . . provide a process for the annual reevaluation of each foster home previously approved . . . .")
[36] 25 *N.J.R.* 123 (emphasis added).

Chapter 122C included two noteworthy standards for purposes of this inquiry: the requirements of medical references and in-person interviews.

"Each foster parent applicant and household member shall provide [DYFS] with a medical reference completed by a physician."[37] A "household member" was defined as "[a]ny person who resides either full-time or part time in the home."[38] As another regulation explained:

> The applicant shall provide a medical reference from a physician on each applicant and household member. [DYFS] shall send a medical reference form to each physician, which shall request the following information:
>
> 1. Whether the individual is free from serious contagious disease;
>
> 2. Whether the individual has any conditions or residual effects resulting from a particular disease;
>
> 3. Whether the individual is in good physical health;
>
> 4. The inoculations given to each child living in the home;
>
> 5. To the physician's knowledge, whether the individual is in good emotional health;
>
> 6. To the physician's knowledge, whether the individual uses any substance, such as tobacco, alcohol or drugs, in a way which affects his or her ability to function;
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> 7. Whether the individual should not care for or associate with a foster child;
>
> 8. How long the individual has been a patient of the physician; and

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[37] *25 N.J.R. 118.*

[38] *25 N.J.R. 118* ("The definitions in *N.J.A.C.* 10:122B, Requirements for Foster Care, are hereby incorporated into this chapter by reference."); *25 N.J.R. 117* ("'Household member' means an adult or child, other than the foster parent or foster child, who resides full-time or part-time in the foster parent's household.").

9. The date the physician last examined the individual.[39]

The regulations also required that DYFS conduct an in-person interview with each household member.[40]

2. Tools Implementing Those Regulations

DYFS created two tools to be used when evaluating foster homes, the "Checklist of Standards for Foster Homes" and the "Foster and Para-Foster Home Reevaluation." Those forms provide additional evidence regarding the regulatory and policy requirements that DYFS employees were required to enforce.

In June 1986, DYFS created the "Checklist of Standards for Foster Homes," which was assigned DYFS form number 5-34.[41] The Cover Sheet to that form, which was revised in June 1988, explained that "[t]he checklist is used as a tool for assessing a foster parent applicant *or reassessing an approved foster parent* against the Foster Care Standards, which are in II D 2517 of the Foster Care Services Manual."[42] The Cover Sheet provided the following instructions, among others:

- "Part I of the checklist includes non-value judgment requirements for a foster home. *Complete* compliance is necessary."
- "Part I is to be completed throughout the course of the study *or reevaluation process*. Primary sources of information for this assessment are the Foster Home Study, home visits, *medical and mental health reports*, references, internal inquiries and criminal history checks."
- "Part II of the checklist is designed to serve as a guide to the homefinder and supervisor in assessing an applicant's *or an approved foster parent's* suitability to foster. Whenever, in the homefinder's opinion, the applicant *or approved foster parent* fails

[39] *25 N.J.R. 121*
[40] *25 N.J.R. 121* (stating that "every household member shall be present at the home visit," and that DYFS had to "[i]nterview each household member who is not participating in the pre-service training"); *see also Id.* ("Each foster parent applicant and adult household member who is identified as a potential primary caretaker shall complete the pre-service training and evaluation program.").
[41] Appendix C at 7.
[42] Appendix C at 7 (emphasis added).

> to fully satisfy or only marginally complies with a desired standard, a notation is made on the checklist. This serves as a reminder to the homefinder of issues which must be pursued with the applicant *or foster parent* and to the supervisor that these issues must be addressed specifically in the disposition or *reevaluat[ion]* conference."[43]

Part I of the Checklist included the following requirements:

> 2. *Medicals have been completed on all household members.*
>
> 3. All household members are free of serious or communicable disease.
>
> 4. *Household members with physical disability or medical problems have provided medical documentation for the care, treatment and prognosis of the condition.*[44]

Part II also required that "[o]ther household members are mentally and emotionally capable of relating to a foster child."[45] The employee completing the Checklist was required to check a box for each requirement to indicate whether the foster home complied, did not comply, or the requirement was inapplicable.[46]

The second tool, DYFS form 26-23 entitled "Foster and Para-Foster Home Reevaluation," was revised in April of 1990.[47] In Section III, that form stated: "Have there been any changes in the foster family in the following areas?" The form listed five areas: "1. Medical 2. Marital 3. Family Size/Composition 4. Financial/Employment 5. Other." Beneath that question, the form provided four lines for an answer, prefaced with

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[43] Appendix C at 7 (first emphasis in original).
[44] Appendix C at 7 (emphasis added).
[45] Appendix C at 7.
[46] Appendix C at 8. That form was revised in February of 1993. With one exception, the revised form is substantively identical to the prior version. The only exception is that the Part II requirement pertaining to other household members' ability to relate to a foster child was removed. It was, however, replaced with a Part I requirement that DYFS assess the "attitude of the foster parent applicant's own children toward accepting a foster child." Appendix C at 8.
[47] Appendix C at 9.

"If yes, please explain."[48] The form also asked: "Does the home continue to meet the standards for foster (or para-foster) homes." Beneath that question, the form provided another answer block, prefaced with "If not explain."[49]

As discussed, the Bureau of Licensing took over final responsibility for the approval of foster homes in 1999. The BOL developed its own checklist to use during initial evaluation and reevaluation of foster homes.[50] That checklist, entitled "Foster Home Inspection/Violation Report," required the BOL inspector to ensure that "Emergency, routine and follow-up medical care are provided."[51]

3. Application of Standards to the Jackson Household

The regulations and policies governing the evaluation process from 1991 to July 7, 2003[52] required DYFS, whether through caseworkers or the BOL, to obtain medical references for and conduct in-person interviews with each household member. Household members include any person residing in the home. Whether their status in the household was pre- or post-adoption, B.J., K.J., T.J., and M.J. were each subject to those requirements. A medical reference would have ensured that a physician examined each of the four boys, which likely would have uncovered their ongoing malnutrition problems. If that physician had access to the children's medical histories since their initial DYFS involvement, the boys' plight would almost certainly have been uncovered. An in-person interview would have required DYFS personnel to meet with each of the

[48] Appendix C at 9.
[49] Appendix C at 9. Form 26-23 was revised again in January of 1995. Those revisions did not alter either the question pertaining to "changes in the foster family" or the question regarding whether the home continued "to meet the standards for foster (or para-foster) homes." Appendix C at 10.
[50] R. Crane Dep., 21:25 to 22:10, Appendix B at 5.
[51] Appendix C at 11.
[52] *See supra* note *21.*

four boys face to face, which also would have strongly increased the likelihood of discovery.

The question, then, is why those requirements did not result in the discovery of the boys' condition. The answer depends on which DYFS employees were responsible for the foster home approval process: the foster home workers in the DOs and then in the RFHUs, who were responsible for the foster home approval process between 1991 and 1999, or the BOL, which was responsible for that process from 1999 on. Each will be addressed in turn.

Between 1991 and 1999 the regulations, DYFS 5-34, and DYFS 26-23 required updated medicals and in-person interviews during reevaluations. It is therefore clear that DYFS' policymaking staff intended that those requirements be complied with. Despite that, the DYFS field employees apparently never obtained updated medicals or in-person interviews. At least four different DYFS employees evaluated the Jackson household on eight different occasions between 1991-2002. At least two of those employees had their work reviewed and approved by supervisors.[53] If only one employee had failed to do so, it might appear that that failure was an individual rather than systemic issue. However, the DYFS records reflect that none of the employees responsible for the Jackson household obtained updated medicals or interviewed all members of the household during *any* reevaluation. It is highly unlikely that each of those workers

[53] In connection with the September 19, 1997 reevaluation of the Jackson household, the DYFS regional employee who conducted this process indicated that there were no household members with physical disabilities or medical problems requiring care or treatment. The DYFS regional employee who conducted this reevaluation was apparently unaware of the medical concerns raised repeatedly in B.J.'s, K.J.'s and M.J.'s files by caseworkers. This lapse seems particularly egregious because DYFS placed the children in the household, facilitated their adoptions and was aware of the need for the boys to receive ongoing, post-adoptive medical care. Because DYFS operated without sufficient capacity, or expectation, for intra-agency communication, critical information about the boys' medical conditions often went unscrutinized, marooned to isolated paragraphs in case files that numbered into the thousands of pages.

independently chose to ignore the requirements of updated medical references and in-person interviews. Instead, it is substantially more likely that, at some point in the chain of command, a decision was made to interpret the regulations and the forms not to require updated medicals[54] and in-person interviews[55] during reevaluations. Most likely, that interpretation was conveyed down the line to the foster home workers responsible for evaluating the home, who performed as instructed. That situation demonstrates a primary systemic flaw: the failure of DYFS to ensure that its self-imposed regulatory and policy requirements were properly interpreted and applied by the workers responsible for enforcement.

From 1999 until today, there were no substantive changes to the regulations. Once the BOL took over the approval process, however, BOL policymakers misinterpreted those regulations not to require updated medicals and in-person interviews.[56] That interpretation is contrary to the plain language of the regulations and common sense. The relevant regulation, contained in Chapter 122C, "Approval of Foster Homes," provided in pertinent part:

> (a) A Division representative shall reevaluate annually each approved foster home *based on the standards in this chapter*. The reevaluation of an employee's foster home shall be conducted by the county office which supervises the employee's foster home, except when the employee works in that county office. In this situation, the county office in an adjacent county shall conduct the reevaluation.[57]

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[54] R. Crane Dep., 20:7 to 22-20.
[55] R. Crane Dep., 22:21 to 23:16. The Office of Licensing has since changed its policy and practice in that regard, as a direct result of the Jackson case. As of late October 2003, OOL now requires that its licensing inspectors interview all adults and children in the home at the time of both the initial licensing and annual home inspections. DHS memorandum advising the Office of the Child Advocate of Policy and Practice Changes as a Result of the Jackson Case. (January 30, 2004)
[56] R. Crane Dep., 21:25 to 22:20, Appendix B at 5.
[57] *N.J.A.C.* 10:122C-2.14 (emphasis added).

The plain language of that regulation required that a DYFS "representative shall reevaluate annually each approved foster home *based on the standards in this chapter.*"(emphasis added). "[T]his chapter" refers to Chapter 122C, the chapter containing the reevaluation regulation. The regulation is clear that the reevaluation must be "based on *the standards* in this chapter;" it does not require that the reevaluation must be "based on [some of] the standards in this chapter."(emphasis added) Two of the "standards in this chapter," that is, Chapter 122C, were the requirements of medical references and in-person interviews. Moreover, an interpretation that requires updated medical references accords with common sense. A person's medical condition can change over time. Reliance on outdated medical references to ensure that a foster home is safe is simply inadequate.[58]

In addition, the OCA's evaluation uncovered another systemic flaw that warrants note, although the existence of that flaw may not bear significant responsibility for DYFS' failure to uncover the alleged systematic starvation at the Jackson household. DYFS must ensure that foster parents have sufficient income to provide for children in their care. "The foster parent shall have income or other means of financial support that makes the family economically independent of the expected foster care maintenance payment."[59] Absent some trigger, a DYFS employee conducting a reevaluation generally would not request independent corroboration of a foster parent's assertion regarding his or her financial situation.[60] Had DYFS required employees to obtain some

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[58] One official indicated that the BOL decided not to require updated medical references because those references were ineffective at detecting communicable diseases. R. Crane Dep., 43:23 to 45:10, Appendix B at 5. In fact, the regulations required that DYFS consider several other potential health issues in addition to the possibility of communicable diseases. *25 N.J.R. 121.*

[59] *25 N.J.R.* 118.

[60] B. Schwebel Dep., 30:11 to 33:11, Appendix B at 9.

documentation, such as, for example, federal income tax returns, the employees reevaluating the Jackson household would have learned that the Jacksons reported approximately $11,000 in income in 2001 on their tax return, a far cry from the $80,000 noted by the caseworker in October 2002. That discovery might have led to consideration of whether the Jacksons could adequately provide for the children in their care as required.

B. Requirements for In-Home Visits

DYFS is required to visit regularly all children under its care, custody and supervision.[61] Visits are no longer required, however, after a child is formally adopted. Nevertheless, at all relevant times here, there was a foster child in the care of the Jacksons who was subject to DYFS' visitation rules. For each child in out-of-home placement, DYFS establishes a "Minimum Visitation Requirement," or "MVR," to determine how frequently a caseworker must visit the child. When DYFS initially takes custody of a child, the child is assigned a caseworker from the local DO who is responsible for conducting the required MVRs. When adoption becomes the goal for that child (rather than reunification with the child's biological parent or parents), the child's file is transferred to one of the ARCs and an ARC caseworker assumes responsibility for conducting the required MVRs. Prior to the discovery of Faheem Williams' death in January 2003, the caseworker and his or her supervisor would establish an MVR schedule for in-person visits ranging from once every week to once every twelve weeks. After Faheem Williams' death, DYFS implemented an internal policy requiring MVRs to occur at least monthly. An MVR is supposed to:

[61] *N.J.S.A.* 30:4C-25; *N.J.A.C.* 10:133D-3.1.

1) determine whether the child is receiving appropriate care and is safe from harm;
2) determine whether the objectives of the case plan are being met;
3) determine what progress is being made toward achieving the case goal; or
4) determine whether barriers to achieving the case goal are being alleviated.[62]

A caseworker performing an MVR is not required to visit with or even observe any other household members.

Various DYFS employees conducted dozens of MVRs at the Jackson household after B.J., K.J., T.J., and M.J. were adopted. Based on the OCA's investigation, it appears that those employees may not have uncovered the alleged systematic starvation of the four boys because, pursuant to DYFS policy, MVRs focus exclusively on the employee's assigned foster child. There is no requirement that a caseworker performing an MVR for a foster child consider other members of the household.[63] Accordingly, the most likely explanation is that the caseworkers did not investigate the obvious health condition of the four boys because they were not required to do so. In addition, there was insufficient continuity among the caseworkers responsible for each of the four boys while they were pre-adoptive. The responsible caseworkers changed frequently, both within the DO and on transfer to the ARC. As a result, no one caseworker was in a position to have a long-term relationship with any one of the four boys, which would have been the optimal situation to increase the likelihood that such a caseworker would discover the child's health condition. In fact, case record references to the boys' weight problems and food issues were frequently followed by

[62] Division of Youth and Family Services Field Operations Casework Policy and Procedures Manual, § 702 (effective September 22, 2003) (discussing *N.J.A.C.* 10:133D-4.5) , Appendix C at 12.
[63] Of course, that does not obviate the caseworker's duty to inquire should he or she notice something out of the ordinary.

changes in caseworkers within and between DOs and ARCs, leaving looming concerns unresolved and often not investigated by successor caseworkers new to the child.

C. Adoption Approval Process

Foster parents who have cared for a child continuously in their home for a period of two years or more may apply to DYFS to adopt the child.[64] DYFS regulations "specify the process used by [DYFS] to assure that each child who is under the supervision of [DYFS] with a case goal of adoption is adopted."[65] Those regulations are applied and enforced by the ARCs. The ARCs assume responsibility for children whose case goal becomes adoption after attempts at reunification have failed. ARC caseworkers provide foster care services to children as well as facilitate the termination of parental rights and adoption processes.

Three regulations require DYFS to conduct a home study whenever any person applies to DYFS to adopt a child.[66] DYFS must "conduct a home study of an adoptive applicant in accordance with N.J.A.C. 10:121A-5.6, Home study services."[67] An "adoptive applicant" is "a person who has applied to [DYFS] to adopt a child."[68] Thus, whenever "a person . . . has applied to [DYFS] to adopt a child," DYFS must conduct a home study.[69] Moreover, DYFS regulations explicitly provide that "[t]he rules contained in *N.J.A.C.* 10:121A, Manual of Requirements for Adoption Agencies, shall apply to the Adoption Resource Centers of the Division of Youth and Family Services."[70]

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[64] *N.J.S.A.* 30:4C-26.7.
[65] *N.J.A.C.* 10:121C-1.1(a) (emphasis added).
[66] *N.J.A.C.* 10:121C-3.1(a) (stating that DYFS is required to "accept an application from . . . any adult New Jersey resident interested in adopting a hard-to-place child").
[67] *N.J.A.C.* 10:121C-3.1(b).
[68] *N.J.A.C.* 10:121C-1.3.
[69] *See also* N.J.A.C. 10:121C-1.1(b) ("This chapter describes . . . [DYFS'] process for the study of adoptive applicants for the adoptive placement of children, in accordance with N.J.A.C. 10:121A-5.6.").
[70] *N.J.A.C.* 10:121C-1.4(a).

One of the rules contained in *N.J.A.C.* 10:121A is 10:121A-5.6, the home study provision. Therefore, the regulations plainly require the ARCs to perform a home study on receipt of an application to adopt a child. The home study must include: (1) "Written medical reports on each applicant *and all other persons living in the home* that include health, results of laboratory tests or X-rays,"[71] and "[a]t least one in-person contact to conduct joint and individual interviews with all members of the applicant's household."[72]

B.J. was the first of the four boys adopted by the Jacksons. As each subsequent child was adopted, the regulations required DYFS to obtain a medical report for B.J. and conduct an in-person interview with him. Had DYFS done so, B.J. would have been examined by a physician in or around March 1997 in connection with the adoption of K.J. and M.J., in or around December 1997 in connection with the adoption of T.J., and in or around October 2000 in connection with the adoption of J.J., a female foster child that DYFS had placed in the Jackson household. Yet, B.J.'s last medical visit prior to his removal from the Jackson household was in December 1995. The same requirements were true for the other boys in connection with each subsequent adoption that took place while each was a member of the Jackson household. No medical reports were obtained for any of the boys in the context of subsequent adoptions.

Because K.J., M.J., and T.J. received pre-adoptive physicals between August and November 1996, medical examinations and interviews in December 1997 may have uncovered their ongoing health issues. The more medical exams the boys had, the greater the likelihood their problems would have been treated. In any event, October 2000 was well into the time period during which the boys were not receiving medical

[71] *N.J.A.C.* 10:121A-5.6(f)(11) (emphasis added).
[72] *N.J.A.C.* 10:121A-5.6(e)(2).

care. If DYFS had obtained medical reports in connection with the adoption of J.J. at that time, the boys' medical conditions might well have been discovered.

The regulations also required DYFS to conduct in-person interviews with each household member. While in-person interviews appear to have taken place for each boy during the pre-consent interviews conducted in preparation for the adoptions in 1997, their apparent medical conditions nonetheless remained unquestioned. It is unknown whether in-person interviews occurred in or around October 2000, however, as the information in the file for J.J. appears vastly incomplete. Finally, the pre-consent interview that took place on October 7, 2002, in connection with the pending adoption of B.P., is incomplete, as it does not even list M.J. as a member of the household[73] and ascribes two medical conditions to B.J., bulimia and depression, for which the only supportive evidence was Vanessa Jackson's representations.

DYFS did not comply with those regulatory requirements because DYFS has misinterpreted them. DYFS draws a distinction between foster parents who apply to adopt a foster child in their care and an applicant seeking to be approved as a "[s]elected adoptive home," defined as an "applicant who has been approved . . . for the purpose of providing an adoptive home to a child who does not currently reside with the adoptive applicant."[74] For the reasons discussed above, that interpretation is wholly foreign to the regulatory language. In fact, one DYFS official admitted at her deposition that there is no basis for that distinction in the regulation.[75]

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[73] Pre-consent interview for B.P., October 7, 2002 (redacting all children's names), Appendix C at 13.
[74] E. Crummy Dep. Vol I, 117:12 to 121:16, Appendix B at 6; *N.J.A.C.* § 10:121C-1.3.
[75] E. Crummy Dep., Vol I, 117:1 to –11, Appendix B at 6.

D. Adoption Subsidy Program

In 1980, the United States Congress enacted the "Adoption Assistance and Child Welfare Act,"[76] which made available federal funding for ongoing monthly subsidy payments to an adoptive parent of a special needs child or a child who is classified as "hard to place." The New Jersey Legislature created a similar statutory scheme to qualify for that funding as well as for related state funding.[77] The Legislature charged DYFS with implementing that program,[78] which DYFS has done by regulation. Pursuant to those regulations "hard to place" children, *i.e.*, those eligible for subsidies, include those who have serious medical or dental conditions, emotional or behavioral problems, or serious disfigurements.[79] Also included are children who are over the age of 10 at the time of adoption, children over the age of two who are members of an ethnic group for whom homes are not readily available, and children over the age of five who are adopted by the foster parents with whom they lived for the prior twelve months.[80]

In order to obtain a subsidy, the child's adoptive parents file a written application and DYFS determines eligibility. If the child is eligible, DYFS and the adoptive parents enter into a written agreement. The written agreement, referred to as the Adoption Assistance Agreement, must include (1) the date on which the agreement is entered into; (2) the stipulation that the agreement will remain in effect regardless of the state of residence of the adoptive parents; (3) the first name and birthdate of the child to be adopted; (4) conditions of the child that make the child hard to place; (5) the needs of the child being adopted; (6) the amount of the subsidy and the board rate upon which the

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[76] 42 U.S.C. §§ 670 to 676.
[77] *N.J.S.A.* 30:4C-45; *N.J.S.A.* 30:4C-46.
[78] *N.J.S.A.* 30:4C-46.
[79] *N.J.A.C* 10:121-2.1.
[80] *Id.*

payment is based; (7) the process by which the adoptive parents shall notify DYFS of changes in child's needs; and (8) the duration of the agreement.[81] The amount of the subsidy may be increased based on the particular needs of the adopted child. A child with a more serious medical condition may receive an increased subsidy amount.

After the initial Adoption Assistance Agreement is executed, DYFS maintains ongoing responsibility to monitor the subsidy. "On an annual basis, [DYFS] will determine that the adoptive parents continue to be legally responsible for the support of the child and that the child continues to receive support from the adoptive parents or the subsidy payments will be terminated."[82] That requirement is reiterated in DYFS' manual, which provides that "[a]doptive parents who receive subsidy [sic] are required to verify for DYFS that they continue to be legally responsible for the child and that they provide at least half of the child's financial support."[83]

DYFS has delegated responsibility for the management of the adoption subsidy program to the Adoption Subsidy Unit located within each ARC. On a yearly basis, the Unit mails a "Subsidized Adoption Annual Renewal Agreement" to the subsidy recipient(s) for execution.[84] That Agreement requires only that the recipient certify that he or she continues to provide at least half of the child's financial support and that he or she understands the terms of the subsidy program. The subsidy recipient is required to provide no other information or corroboration in connection with the renewal. There is no requirement for any confirmation that the child is receiving appropriate medical care

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[81] *N.J.A.C.* 10:121-2.2(a)(b)(e); *see also* 45 C.F.R. § 1356.40 (detailing analogous federal requirements for subsidy agreement).
[82] *N.J.A.C.* 10:121-2.2(g).
[83] Division of Youth and Family Services Field Operations Casework Policy and Procedures Manual, § 1336 (effective June 23, 1997), Appendix C at 14.
[84] Appendix C at 15.

or for home visits or for any corroboration that the subsidy funds are being spent for the child's welfare.

Vanessa and Raymond Jackson applied for and received adoption subsidies for B.J., K.J., T.J., and M.J.[85] Every year the Adoption Subsidy Unit mailed a Renewal Agreement to the Jackson household for each of the four boys; every year the Jacksons signed and returned those forms to the Unit; and every year the Adoption Subsidy Unit renewed the subsidies without question based solely on the Jacksons' representations that they continued to provide at least half of the financial support necessary for the four boys and that they understood the subsidy program.[86]

E. Collateral Systems

1. Education

Under New Jersey's compulsory education law, children between the ages of six and sixteen are required to attend public school or receive "equivalent instruction."[87] The New Jersey Supreme Court has held that "equivalent instruction" refers solely to the academic education a child receives.[88] Based on that interpretation, the Court concluded that the compulsory education statute authorizes home schooling.[89] According to the New Jersey Department of Education, families are not obligated to inform the local school district that they are home schooling the child, nor is the school

[85] Notably, B.J., K.J., T.J., and M.J. were all approved for increased subsidies based on medical or dental conditions. Specifically, prior to their adoptions, three of the boys were identified as having a medical or dental condition that requires repeated hospitalization or treatment, and two were identified as having a diagnosed emotional or behavior problem, psychiatric disorder, serious intellectual incapacity or brain damage that seriously affects the child's ability to relate to his peers or authority figures, including but not limited to a developmental disability. Appendix C at 16.

[86] B.J. became ineligible for a subsidy in September 2002 due to his age and because he was no longer in school, Appendix C at 17. However, the Jacksons continued to receive subsidies for the remaining three children up until the time the children were removed from the home.

[87] *N.J.S.A.* 18A:38-25.

[88] *State v. Vaughn,* 44 N.J. 142 (1965).

[89] *Id.*

required or authorized to review the curriculum instruction for a child who is homeschooled.[90] When a child is in foster care, however, DYFS must consent before the child's foster parent can home school the child. The DYFS Policy Manual provides:

> The DO/ARC Manager may give approval for a foster child . . . to participate in home teaching only when all of the following conditions are met:
>
> - the child's parents and the child, when appropriate, agree to . . . home teaching; and
> - the . . . home teacher meets the standards of the Department of Education; and
> - . . . participation in home teaching is consistent with the case plan for the child, which is designed to address the child's needs; and
> - no cost to DYFS will be incurred.[91]

If a DO or ARC manager consents to home schooling, the caseworker must complete DYFS Form 16-76, Special Approval Request, and include documentation demonstrating that those requirements have been satisfied.[92]

B.J. was the only one of the four boys who was homeschooled while he was a foster child in the Jackson household. B.J. apparently attended public school through the 1995 school year. In May of that school year, B.J.'s school contacted DYFS to report an allegation of abuse. The school also expressed concern about B.J.'s physical appearance, specifically his low weight, and observed that he always appeared hungry. DYFS apparently investigated those allegations and concluded that they were not substantiated, although it is unclear whether DYFS addressed the concerns about B.J.'s weight and appetite.

At the beginning of the next school year, Mrs. Jackson began to home school B.J. Mrs. Jackson did so, however, without obtaining DYFS' consent. She did

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[90] www.state.nj.us/njded/genfo/overview/faq_homeschool.htm. (visited February 6, 2004)
[91] Division of Youth and Family Services Field Operations Casework Policy and Procedures Manual, § 1008.5 (effective August 8, 1993) , Appendix C at 18.
[92] *Id.*

not advise B.J.'s caseworker that she had begun homeschooling until October 4, 1995, well into the school year. Despite the possibility that Mrs. Jackson withdrew B.J. because of the school's allegation of abuse the prior May, and the fact that she did so without obtaining DYFS' consent, the caseworker apparently sanctioned the home schooling and allowed it to continue indefinitely.

2. Municipal Government

On July 16, 2003, the Borough of Collingswood's Housing Inspection Division conducted an annual inspection of the Jackson's rental home in Collingswood, NJ.[93] The inspector noted two violations: (1) overgrown grass and weeds; and (2) window frames in need of scraping and repair.[94] On that same date, the housing inspector contacted the property owner to determine whether he was aware that the electric service had been disconnected.[95] The property owner was not aware and indicated that he would call the Jacksons to investigate.[96] He did so, and subsequently advised the inspector that the "tennant (sic) ran into some financial problems and the electric should be turned on in a couple of weeks."[97] The property owner also reported that he advised the Jacksons not to use candles.[98] The inspector did not, however, conclude that the lack of electric service violated any applicable codes.

The inspection report was forwarded to the property owner, who was granted an extension until September 15, 2003 to abate the violations.[99] On September 16, the property owner requested a second extension. Collingswood granted that

[93] Collingswood Housing Inspection Division Violations, July 16, 2003, Appendix C at 19.
[94] *Id.*
[95] *Id.*
[96] *Id.*
[97] *Id.*
[98] *Id.*
[99] Collingswood Fire Department, Housing Inspection Division, Request for Time Extension, July 29, 2003, Appendix C at 20.

request.[100] On September 22, 2003, officials issued a Housing Inspection Certificate of Compliance,[101] suggesting that the violations had been abated.[102] There is no indication that Collingswood housing officials knew that DYFS was involved with the Jackson household or informed DYFS of the lack of electric service or other violations.

F. Safety Assessments

On October 23, 2003, the Department of Human Services issued a press release to announce that:

> The Division of Youth and Family Services (DYFS) has conducted face-to-face safety assessments on more than 14,000 children in foster care since June . . . .[103]

That public pronouncement, however, was inaccurate. Hundreds, if not thousands, of the safety assessments were not "face-to-face;" they involved little more than a review of documents memorializing routine visits with the child over the prior six to twelve months. The Jackson household was no exception. DYFS' "safety assessment" on the Jackson household consisted of a caseworker reviewing file documents from at least the prior eight months, completing a form, and conferencing the details of that file with her supervisor to obtain her signature on that form. DYFS did not require that caseworker to conduct a face-to-face visit specifically to assess the safety of the Jackson household. Had DYFS actually conducted such a visit and interviewed the

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[100] Collingswood Fire Department, Housing Inspection Division, Request for Time Extension, September 16, 2003, Appendix C at 21.

[101] Borough of Collingswood, Residential Housing/Maintenance Inspections, Certificate of Compliance, September 22, 2003, Appendix C at 22.

[102] On that same date, Collingswood also issued a New Jersey Uniform Fire Code Certificate of Inspection for the residence, Appendix C at 23.

[103] http://www.state.nj.us/humanservices/Press-2003/inunprecedentedeffort_dyfs_10_23_03.htm (visited February 4, 2004). Similarly, the press release also described the process as "an unprecedented effort to *visit* and evaluate all 14,393 children in substitute care," including those "placed in foster homes." *Id.* (emphasis added), Appendix C at 24.

foster child and the household members, DYFS might have uncovered the malnutrition of B.J., K.J. T.J., and M.J and begun treatment sooner for the four boys.

The obligation to conduct face-to-face safety assessments arose in connection with the settlement of a high-profile lawsuit, *Charlie and Nadine H. v. McGreevey*, Civ. Action No. 99-3678 (SRC). In 1999, Children's Rights Inc., a nonprofit advocacy organization, filed a class action lawsuit against the Governor of the State of New Jersey, the Commissioner of the New Jersey Department of Human Services, and the Director of the New Jersey Division of Youth and Family Services. The lawsuit, which was filed on behalf of children served by the child welfare system, alleged that there were serious flaws in the system that "jeopardized the health and safety" of those children.[104] After four years of litigation, the parties' settlement negotiations began to show promise during May and June of 2003.

During that same time period, in mid-May 2003, former DHS Special Deputy Commissioner Colleen Maguire decided that DYFS should conduct safety assessments on all children in out-of-home placement.[105] Ms. Maguire made that decision based on "case situations that would come to [her] attention, continued concerns that were expressed by plaintiffs [in the Children's Rights litigation] and, quite frankly, a need to get closer to assuring safety for children."[106] As a result, Ms. Maguire issued a directive ordering safety assessments for all children in out-of-home placements.[107] She testified when deposed by the OCA that that directive and the procedure for

[104] Children's Rights Case Summary, Appendix C at 25.
[105] C. Maguire Dep., 25:14 to 26:1, Appendix B at 7.
[106] C. Maguire Dep., 25:20 to –24, Appendix B at 7.
[107] C. Maguire Dep., 25:16 to 26:1, Appendix B at 7.

implementing that directive were memorialized in a memorandum intended to be distributed to those people responsible for actually performing the safety assessments.[108]

Although the intent was for that memorandum to be provided to the employees responsible for performing the safety assessments, that memorandum, in fact, apparently was never distributed.[109] DHS and DYFS instead conveyed the message of that memorandum verbally.[110] That memorandum, a draft of which has been provided by DHS,[111] describes the directive as follows:

> It is essential that we are able to confirm that we have met our responsibility in assessing children in placement. Therefore, I am directing that for all children in foster care (regular, contracted, para, special, SHSP) or kinship/relative care, we affirm that we have documented in the child's case record that a safety assessment has taken place during the previous *six months*.[112] (emphasis added)

DYFS began those safety assessments immediately.[113]

Three weeks later, on June 23, 2003, the parties in the Children's Rights litigation entered into a Settlement Agreement. Because the lawsuit was premised on the allegation that the system had failed the plaintiffs and could not guarantee their safety, the Settlement Agreement required the Defendants to assess the safety of all the children

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[108] C. Maguire Dep., 33:6 to 34:16, Appendix B at 7.

[109] Memorandum from Meredith L. Schalick, Special Assistant, Office of Children's Services, dated February 5, 2004 ("[A]fter speaking with current and former DYFS staff, it appears that this memorandum was never sent, and instead verbal instructions were given to appropriate staff to implement the process."), Appendix C at 26; *see also* D. Bender Dep., 22:25 to 23:20 (stating that she either received a memorandum from Beth McGinnis, had a conversation with Beth McGinnis, or had a conversation with Eileen Crummy), Appendix B at 1.

[110] *Id.*

[111] *Id.* ("Please note that former Special Deputy Commissioner Colleen Maguire directed DYFS to conduct safety assessments on children in foster care sometime in May 2003. The process described in the [draft memorandum] was later verbally approved by Special Deputy Commissioner Colleen Maguire.")

[112] Draft Memorandum from Beth McGinnis, Acting Deputy Director Program Operations, to Regional Assistant Directors, dated June 2, 2003 (hereinafter "June 2nd directive") (emphasis added), Appendix C at 27.

[113] C. Maguire Dep., 25:14 to –15, Appendix B at 7.

in placement by October 23, 2003.[114] The execution of the Settlement Agreement did not, however, prompt the DHS and DYFS to begin those safety assessments anew; instead, both agencies continued to apply the June 2nd directive.[115]

Despite the DHS' later public pronouncements, the June 2nd directive did not require DYFS employees to conduct face-to-face visits specifically to assess the safety of each child in out-of-home placement.[116] The draft memorandum described the procedure as follows:

> [F]or all children in foster care (regular, contracted, para, special, SHSP) or kinship/relative care, we [must] affirm that we have documented in the child's case record that a safety assessment has taken place during the previous six months. *This documentation may occur using the safety assessment tool or the ARC Placement Assessment Process.*
>
> As you are all aware, we have not completed the development of the Safety Assessment Tool for out of home placement. Until that is finalized we will utilize the in home tool and for ARC cases, the Placement Assessment process to document safety.
>
> As a measure of our quality assurance, we must confirm in writing, in each child's record that this safety decision has been made and is documented. Should the record not reflect that an assessment was completed within the past 6 months, it will be necessary for the child's caseworker to conduct and document such an assessment within the next 90 days (September 2, 2003).[117]

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[114] "Settlement Agreement," *Charlie and Nadine H. v. McGreevey, et al.*, Civ. Action No. 99-3678 (SRC), Appendix C at 28.

[115] Ms. Maguire testified:

Q. Under the settlement agreement, did DYFS actually then send someone out physically to conduct a safety assessment for every single one of the 14,000 children after this settlement agreement was agreed to?

A. No.

Q. Why not?

A. Because safety assessments had begun prior to the settlement agreement on June 2nd.

C. Maguire Dep., 25:7 to –15, Appendix B at 7; *see also* C. Maguire Dep., 42:1 to –15 (stating that the June 2nd directive remained in effect until August 18, 2003), Appendix B at 7.

[116] See also, D. Bender Dep., 41:7-12, Appendix B at 1.

[117] June 2nd directive (emphasis added), Appendix C at 27.

Those procedures required that each ARC caseworker conduct a paper review to verify for each child that a Placement Assessment had been completed between January 2, 2003 and June 1, 2003. If a Placement Assessment had been conducted during that time frame, no further review was conducted. If not, the June 2nd directive required the ARC caseworker to conduct a Placement Assessment prior to September 2, 2003.[118]

It is important to note that Placement Assessments did not require a contemporaneous face-to-face visit specifically to assess safety. Instead, ARC employees were instructed to complete Placement Assessments based on "the observations of the case worker and supervisor over the prior six-month period."[119] As a result, a Placement Assessment completed in January 2003 could have been based on visits ranging back to June 2002. Because the caseworker completed that form in January 2003, it would qualify as a "safety assessment" within the meaning of the June 2nd directive, even though the last face-to-face meeting might have been in June 2002 -- a full year before the safety assessment process supposedly took effect. Just as significantly, if not more so, those visits were not specifically to assess the safety of the child's placement. Instead, most were likely routine monthly MVRs, rather than a specific evaluation of the safety of each child in out-of-home placement.[120]

The failure to conduct a face-to-face visit specifically to assess safety is contrary to the fundamental purpose of a safety assessment. According to a senior DHS employee, a safety assessment is "an assessment, right now, [of] the child's current status. Is that child in danger right now? So to make that assessment, you would need to

[118] June 2nd directive, Appendix C at 27.
[119] E. Crummy Dep. Vol. II, 16:9 to –12, Appendix B at 6; D. Bender Dep., 45:8 to 47:4, Appendix B at 1.
[120] D. Bender Dep., 40:20 to –22, Appendix B at 1.

be – you'd need to see that child right now and see the people interacting with that child right now."[121]

The Jackson household presents a prime example of the failure of that process. There is no indication that the ARC caseworker for B.P., the foster child in the Jackson household, conducted a face-to-face visit specifically to assess safety in connection with the completion of the June 6, 2003, Placement Assessment. Instead, she filled out the Placement Assessment form apparently based on a review of the file (in accordance with ARC policy),[122] and presented the form to her supervisor for approval.[123] The Placement Assessment makes no mention of a face-to-face visit to the Jackson household between June 2nd and June 6th, nor does B.P.'s case file contain a record of a face-to-face visit on any of those days.[124] The June 6, 2003 Placement Assessment and the Contact Sheet memorializing the October 7, 2002 pre-consent interview both omit M.J. from the list of family members and contain descriptive similarities, suggesting that the caseworker relied upon information from the notes of the pre-consent interview that had occurred eight months earlier.[125]

In short, contrary to the Department of Human Services' public assertion, DYFS did not "conduct[] face-to-face safety assessments on more than 14,000 children in foster care" between June of 2003 and October of 2003. The June 2nd directive did not require a face-to-face visit to assess safety. Instead, it required little more than a "paper review" -- review of documents memorializing routine visits to the child over the prior

[121] A. Blake Dep., 41:2 to -7, Appendix B at 2.
[122] E. Crummy Dep. Vol. II, 16:9 to –12, Appendix B at 6.
[123] "Placement Assessment," Appendix C at 29.
[124]Curiously, just one week after the June 6th Placement Assessment is purportedly completed, a June 13, 2003 MVR was conducted, during which time the caseworker indicated that B.P. was doing well.

six to twelve months. In the case of the Jacksons, had DYFS actually conducted such a visit and interviewed the foster child and the household members using a safety assessment tool, DYFS should have uncovered the four boys' medical conditions. DYFS did not, however, failing the boys once again.

IV. RECOMMENDATIONS

This preliminary report, JACKSON INVESTIGATION: An Examination of Failures of New Jersey's Child Protection System and Recommendations for Reform, hand-delivered on February 12, 2004 to the Department of Human Services and otherwise made available to the public, satisfies two statutory requirements: (1) that "the child advocate [shall] provide its findings and recommendations to the agency affected by the findings and recommendations" and (2) that the child advocate "make those findings and recommendations available to the public."[126] Additionally, the statute requires that the agency develop a corrective action plan within 30 days from the receipt of the findings and recommendations, and that the child advocate monitor the department's implementation of the plan. Accordingly, the corrective action plan resulting from the report and recommendations contained herein is due to the Office of the Child Advocate on March 12, 2004.

A. Safety Assessments

A significant number of the safety assessments for all children under the supervision of the ARCs did not include a contemporaneous face-to-face visit with the child and other household members between June and October 2003. Therefore, DHS should expand its revised safety assessment process to include all children under the

[126] *N.J.S.A.* 52:17D-6.

supervision of the ARCs, not just the children of the Southern ARC and a generalized sampling as planned. Inconsistencies exist in accountings of both the number and manner in which safety assessments were conducted prior to August 18, 2003. It should be mandatory and clearly communicated from management that safety assessments include a face-to-face visit and detailed observation of the home utilizing the modified Safety Assessment tool, interviews with each and every member of the household, and a face-to-face visit with the child in placement to ensure the home is safe and appropriate.

B. Continuum of Medical Care for Foster Children: Medical Home Model

A key finding of this report is that DYFS did not maintain accurate, current medical information for each foster care child. Doctors who evaluated the children often did not have access to the children's previous medical histories and almost always relied on a foster parent or DYFS caseworker to provide that history. Medical concerns regarding the children's failure to thrive were frequently not pursued medically or reported to the Family Court as part of the adoption process. Therefore, DYFS should establish a Medical Home Model for children by establishing medical offices and creating networks of pediatricians in each county who are the primary healthcare providers for foster children in that county.

The medical offices should serve as a resource for primary care physicians, caseworkers, foster parents, and foster children. Each medical office should consist of a team of healthcare professionals, who would maintain medical files for all children in care and review those files at regular intervals.

The medical offices could serve as the liaison between the primary care physicians and the caseworkers. Primary care physicians could contact the medical

offices serving their region when they have concerns about a foster child; the medical offices would then be able to follow up with the District Office or Adoption Resource Center to evaluate the situation and ensure that any required follow-up occurred.

The medical offices should assume much of the medically-related duties that are currently assigned to DYFS caseworkers. Although the OCA's investigation focused primarily on the four adopted boys in the Jackson household, at least 10 different caseworkers, from three different DYFS offices, were assigned to the boys' cases during their time in foster care. The OCA's review of the DYFS files revealed that caseworkers almost always relied upon the medical information provided to them verbally by the foster parents and very rarely obtained independent written verification from the medical provider. The OCA's review also discovered that when independent medical information was requested, it was most often done by an ARC caseworker in anticipation of the subsequent adoption, and not at the time of the actual medical appointment. The chronology for each child, located in Appendix A, documents both of these points.

The OCA's investigation revealed that ARC caseworkers interpreted the medical records in order to write pre-adoptive final reports for the Family Court's review of the pending adoption. The three[127] final reports submitted to the Family Court for the Jackson children contained inaccurate medical information about the children. Caseworkers, unskilled and untrained in pediatric medical care and child development, omitted relevant medical information; misunderstood the medical records and reflected that misunderstanding in their final report; caseworkers drew conclusions that were not

[127] M.J.'s and K.J.'s histories were contained in one pre-adoptive final report.

supported by any of the medical records in their possession, or they failed to request the most recent medical information.

The medical office physicians and their qualified staff should write the medical history component of the final report or review and verify the veracity of the statements in the caseworkers' prepared documents.

The OCA's investigation revealed that each child's pre-adoptive physical occurred at least 6 months prior to the actual adoption.[128] Then, in the period of time after the physical but prior to the adoption, the caseworkers did not request any additional medical records, even though all four boys had regularly-scheduled medical appointments. During that period of time, Raymond and Vanessa Jackson apparently failed to take the boys to their medical appointments, but the caseworkers were unaware of this because they did not request the updated medical records.

C. Integration and Shared Purpose

DYFS case practice should be more fully integrated to ensure that critical case information is shared between and among offices, and that caseworkers operate in compliance with DYFS regulations to provide meaningful, holistic service to all children in care.

The investigatory process revealed a number of striking deficiencies within the DO, ARC, and Regional Office for the Southern Region. Chief among these deficiencies were: (1) inadequate training on issues of child safety and protection for all workers who come into direct contact with youth; (2) failure to transfer critical case information among and within DYFS offices; and (3) narrowly focused, niche-based

[128] See Appendix A, B.J. Chronology, M.J. Chronology, K.J. Chronology, T.J. Chronology

caseworker responsibility that renders relevant only information specific to the completion of a particular task.

The cumulative effect of these systemic shortcomings is the creation of a culture in which insufficient information is available to make important decisions, caseloads are too high, follow-through ad hoc, records are disjointed, and files substantively weak.

D. Adoption Subsidy and Post Adoption Supports

For those families that elect to apply and are approved for an adoption subsidy, the State of New Jersey should provide a host of support services, including, but not limited to: an annual physical examination for adopted children completed by a State-licensed pediatrician; respite care; and parenting classes that include specialized training on issues that may arise while raising special needs children as well as more generalized counseling on how best to access resources and advocate for the well-being of their families.

Adoption achieves permanency for children in a meaningful and lasting way, and the government should afford the same measure of protection to adoptive relationships as to biological relationships. The government's wise decision to offer post-adoptive subsidies to support special-needs and hard-to-place children is an investment in these relationships that requires, at the very least, credible assurances from adoptive parents that children are receiving appropriate medical attention. All families that elect to apply and are approved for an adoption subsidy should be required to submit a medical form completed by a licensed physician to DYFS annually, in addition to the certification that the child remains in their care. The requirement should be included in

the adoption agreement that is executed by the ARC and the adoptive family. Refusal to submit an annually-completed medical form should result in administrative consequences such as forfeiture of the state-funded portion of the subsidy or scrutiny of the home by DYFS.

E. Quality Assurance

DYFS should implement a comprehensive and ongoing Quality Assurance initiative that proactively audits and improves work with children and families. Had such an effort been in effect, it is likely that the exclusion of contemporaneous face-to-face safety visits within the ARCs' implementation of the safety assessment process would have been uncovered, and presumably remedied, much sooner.[129] Moreover, a performance improvement and training program for caseworkers and supervisors could reap untold benefits by identifying systemic defects within DYFS, developing corrective action plans and sharpening workers' skills before a public crisis strikes. In short, DYFS should not rely on anterior organizations to judge its strengths and weaknesses as it endeavors to reform proactively and aggressively.

Although the DYFS Quality Assurance program should penetrate every office in the state and not be primarily incident-based, such an effort does not exclude the capacity to examine individual cases. In the recent past, DHS and DYFS have reeled in the wake of publicly-reported failures, diverting senior staff from implementation of reforms to intensive examinations of systemic and human failures in individual cases. Senior-level DHS and DYFS staff are responsible for the safety and well-being of over 60,000 children under the supervision of the Division. They should be able to stay focused on the overall systemic change that is essential to create a better organization. A

[129] A. Blake Dep., 43:13-25, Appendix B at 2.

vigorous Quality Assurance initiative should have the capacity to examine individual failures, no matter how publicly scrutinized, and to recommend changes necessary to improve services to children and families.